

**PLANNING AND ZONING COMMISSION
MINUTES
SPECIAL MEETING
SEPTEMBER 22, 2015**

Place: Room 206, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Cameron, Cunningham, DiDonna, Olvany, Sini, Jr., Voigt

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Syat
Channel 79

Chairman Cameron opened the meeting at 8 P.M. and read the first agenda item:

GENERAL MEETING

Deliberations only on the following two items:

Land Filling & Regrading Application #362, Evan Saucedo, 1 Fairmead Road. Proposing to regrade for the construction of a new driveway and associated retaining walls, and to perform related site development activities. *PUBLIC HEARING CLOSED: 9/15/2015.*

Commission members discussed the project and noted that the regrading would be for the driveway and the addition. The back-up area from the garage must be at least 24 feet. Two Cultec units are proposed in the front yard. It will be necessary to relocate the picket fence in the front yard so that it is on private property, not on the street right-of-way. Commission members directed the staff to draft a resolution for consideration at a future meeting.

Chairman Cameron read the following agenda item:

Coastal Site Plan Review #203-A, Flood Damage Prevention Application #116-A, Land Filling & Regrading Application #365/lot line adjustment, John & Cindy Lynn Sites, 209 Long Neck Point Road. Proposing to construct additions and alterations to the existing residence; merge Lot #10-2 and Lot #10 into a single lot; and perform related site development activities within regulated areas.

Commission members reviewed the application materials and noted that the old house was near the edge of the water. Additions and alterations to the existing house are good but some of the work is even closer to the water than the existing house. The new garage is on the landward side of the house and will require that the two separate parcels be combined into one large parcel. The resolution of approval should be drafted to include a provision that notes that the future subdivision of the property would be difficult, if not impossible due to the construction of the garage. Mr. Voigt noted the unique characteristics of the existing residence, which was built many years ago, and is close to the water. Commission members noted that there was some work within the 100 foot critical Coastal Area Management (CAM) boundary and there was some concern about that work. They directed staff to draft a resolution for consideration at a future meeting.

Chairman Cameron read the following agenda item:

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Discussion, deliberation and possible decisions regarding the following:

Land Filling & Regrading Application #364, DH Realty, LLC, 272 West Avenue. Proposal to fill and regrade in the front and back yard, and install associated retaining wall and perform related site development activities. *PUBLIC HEARING CLOSED: 9/15/2015.*

The following motion was made: That the Planning & Zoning Commission waive the process of reading all the draft resolutions aloud because each member has had an opportunity to review the drafts prior to the meeting. The motion was made by Mr. DiDonna, seconded by Mr. Sini and unanimously approved.

Commission members reviewed the draft resolution. Mr. Olvany noted that there seems to be a sump and a pipe in the low portion of the property which might adversely affect the neighbor. Commission members agreed to revise the draft language to include a caution about that item. The following motion was made: That the Planning & Zoning Commission adopt the following revised resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Sini and seconded by Mr. Voigt. Mr. Sini, Mr. Voigt, Ms. Cameron and Mr. DiDonna voted in favor of the motion. Mr. Olvany voted against the motion and Mr. Cunningham abstained because he had not attended the public hearing. The motion passed of a vote of 4-1-1. The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 22, 2015**

Application Number: Land Filling & Regrading Application #364

Street Address: 272 West Avenue
Assessor's Map #22 Lot #43

Name and Address of Applicant's Representative: listed on application form:	Denis Guilfoyle Guiltec Development 208 Stamford Avenue Stamford, CT 06902
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Name and Address of Applicant & Property Owner:	DH Realty, LLC 272 West Avenue Darien, CT 06820
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Activity Being Applied For: Proposal to fill and regrade in the front and back yard, and install associated retaining walls and perform related site development activities.

Property Location: The subject property is situated on the north side of West Avenue, approximately 75 feet west of its intersection with Edgerton Street.

Zone: R-1/5

Date of Public Hearing: September 15, 2015

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Time and Place: 8:00 P.M. Room 119 Town Hall

Publication of Hearing Notices

Dates: September 4 & 11, 2015 Newspaper: Darien News

Date of Action: September 22, 2015

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
October 2, 2015

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 850, and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant's engineer whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to fill and regrade in the front and back yard, and install associated retaining walls and perform related site development activities. The regrading will flatten the yards and reduce velocity of runoff. Changes to the residence are also underway.
2. At the public hearing, the applicant's engineer, John Martucci, of LBM Engineering, LLC, explained the proposal to flatten portions of the front yard and back yard. He noted that due to the grades of the property storm water will continue to flow from west to east. The submitted Site Plan dated June 15, 2015, shows the proposed installation of Cultec units in the back yard to achieve some infiltration of storm water runoff from the roof of the house. The overflow from the infiltrators will be near the northeast corner of the site.
3. The owner of the adjacent property to the east expressed concern at the Public Hearing regarding the existing and proposed flow of storm water to his property from and through the subject site. Mr. Martucci indicated that no additional storm water will be directed to the low portion of the site (adjacent to the side of the existing house) and the storm water from the front and back yards will be directed away from the neighbor's house, but the surface water will still need to drain downhill to the neighbor's property.
4. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.

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5. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling & Regrading Application #364 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Filling, excavation, regrading work, and associated retaining walls shall be in accordance with the plans submitted to and reviewed by the Commission entitled:
- Site Plan prepared for DH Realty Holdings, LLC, #272 West Avenue, by LBM Engineering, LLC, scale 1"=10', dated June 15, 2015.
 - 272 West Avenue, Proposed Landscaping, scale 1"=10', by Jackie, Cameron Landscape Design, LLC, dated 9-10-15.
- B. Care shall be taken to assure that no additional storm water will be directed to the low portion of the site adjacent to the side of the existing house and that the storm water from the front and back yards, as well as any drainage pipes in the low portion of the subject property shall be directed away from the neighbor's house, but the surface water will still need to drain downhill toward the neighbor's property.
- C. Because of the nature of the site work involved in this project, the Commission hereby waives the requirement for a performance bond.
- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the "Site Plan" in Condition A, above, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or re-stabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. A one-page Engineer's Report dated July 28, 2015 was submitted for the record. That report notes that there is an increase in impervious area by less than 100 square feet. Cultec infiltrator units will be installed in the backyard to accommodate some of the storm water from the roof of the existing house. Because of the relatively minor amount of new impervious surface, the Commission hereby waives the requirement for stormwater management under Section 880 of the Darien Zoning Regulations.
- F. A drainage maintenance plan for the proposed Cultec units shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Darien Land Records or with the Planning and Zoning Commission file on this matter. The maintenance plan shall require the property owner and all subsequent property owners of 272 West Avenue to maintain the drainage facilities per the maintenance plan.

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- G. A related “Notice of Drainage Maintenance Plan” shall be filed in the Darien Land Records within the next 60 days of this approval and prior to any on-site filling or regrading work requested herein.
- H. A detailed regrading design and storm water drainage system design have been incorporated into the plans to avoid potential impacts of runoff on the adjacent properties. It is critical that commencing immediately and throughout the development of the site, even before the final drainage system is installed, the applicant must properly manage storm water runoff to avoid negative impacts to the neighbors and/or the street.
- I. Prior to the request for the Certificate of Occupancy for the residence, the applicant shall submit verification in writing and/or photographs from the professional designer of the drainage system that all aspects of the stormwater management and grading in the yard have been completed in compliance with the approved plans referred to in Condition A, above.
- J. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies.
- K. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke this permit as it deems appropriate.
- L. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (September 22, 2016). This may be extended as per Sections 858 and 1009.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these conditions and the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within the next sixty days in order to finalize this approval.

Chairman Cameron read the following agenda item:

Land Filling & Regrading Application #363, Peter Grant, 38 Old Parish Road (aka 154 West Avenue). Proposing to fill and regrade and construct associated walls, and to perform related site activities. *PUBLIC HEARING CLOSED: 9/15/2015.*

Commission members reviewed the draft resolution. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. Voigt, seconded by Mr. Olvany and passed by a vote of 5-0-1 (Mr. Cunningham abstained because he had not attended the public hearing). The adopted resolution reads as follows:

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ADOPTED RESOLUTION**

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Application Number: Land Filling & Regrading Application #363

Street Address: 38 Old Parish Road aka 154 West Avenue
Assessor's Map #20 Lot #17

Name and Address of Applicant & Jacek Bigosinski
Applicant's Representative: PB Architects
110 Boston Post Road
Darien, CT 06820

Name and Address of & Peter Grant
Property Owner: 38 Old Parish Road
Darien, CT 06820

Activity Being Applied For: Proposing to fill and regrade and construct associated walls, and to perform related site activities.

Property Location: The subject property is on the west side of Old Parish Road approximately 15 feet north of its intersection with West Avenue. Zone: R-1/5

Date of Public Hearing: September 15, 2015
Time and Place: 8:00 P.M. Room 119 Town Hall

Publication of Hearing Notices
Dates: September 4 & 11, 2015 Newspaper: Darien News

Date of Action: September 22, 2015 Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action: Newspaper: Darien News
October 2, 2015

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400, 850, and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

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Following careful review of the submitted application materials and related analyses, the Commission finds:

6. The proposal is to fill and regrade and construct associated walls, and to perform related site activities. The applicant has demolished a residence, and has received permission from the EPC to construct a replacement residence on the property. The subject application is to fill and regrade to flatten a portion of the yard area on the north side of the residence. Cultec units have been proposed for stormwater management.
7. The street address of the property has been 154 West Avenue. The house has been demolished. The proposed house will be accessed from Old Parish Road and the street address of the replacement house will be 38 Old Parish Road. The Darien Environmental Protection Commission approved the construction of a residence. EPC 29-2014 was approved on January 7, 2015 for the construction of the replacement residence within the regulated area. They subsequently approved the filling/regrading/wall. EPC 26-2015 approved the filling and regrading in the yard on September 2, 2015. Both EPC approvals are hereby incorporated by reference.
8. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000. It was noted that the installation of a solid wall at the edge of the fill will create a clear line of the maximum extent of development and activity, thus helping to protect and preserve the adjacent wetlands area as natural and undeveloped.
9. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling & Regrading Application #363 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- M. Filling, excavation, regrading work, and associated retaining wall shall be in accordance with the plans submitted to and reviewed by the Commission entitled:
 - Peter Grant, Grading/Wall Plan, by Fairfield County Engineering, LLC, last revised 8/17/15, Sheet 1 of 2.
 - Peter Grant, Detail Sheet, by Fairfield County Engineering, LLC, last revised 8/17/15, Sheet 2 of 2.
- N. Because of the minor nature of the site work involved in this project, the Commission hereby waives the requirement for a performance bond.
- O. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the “Grading/Wall Plan” and “Detail Sheet” in Condition A, above, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as

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per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.

- P. A drainage maintenance plan for the proposed Cultec units shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Darien Land Records or with the Planning and Zoning Commission file on this matter. The maintenance plan shall require the property owner and all subsequent property owners of 154 West Avenue/38 Old Parish Road to maintain the drainage facilities per the maintenance plan.
- Q. A related "Notice of Drainage Maintenance Plan" shall be filed in the Darien Land Records within the next 60 days of this approval and prior to any on-site filling or regrading work requested herein and prior to the issuance of a Zoning and Building Permit for the residence.
- R. A detailed regrading design and storm water drainage system design have been incorporated into the plans to avoid potential impacts of runoff on the adjacent properties. It is critical that commencing immediately and throughout the development of the site, even before the final drainage system is installed, the applicant must properly manage storm water runoff to avoid negative impacts to the neighbors and/or the street.
- S. Prior to the request for the Certificate of Occupancy for the residence, the applicant shall submit verification in writing and/or photographs from the professional designer of the drainage system that all aspects of the stormwater management and grading in the yard have been completed in compliance with the approved plans referred to in Condition A, above.
- T. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. The construction of the replacement residence and associated driveway from Old Parish Road will require a Sewer Connection Permit and Street Opening Permit from the Darien Public Works Department.
- U. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke this permit as it deems appropriate.
- V. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (September 22, 2016). This may be extended as per Sections 858 and 1009.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these conditions and the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within the next sixty days AND prior to the issuance of the Zoning and Building Permit for the residence in order to finalize this approval.

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Chairman Cameron read the following agenda item:

Coastal Site Plan Review #302-A, Land Filling & Regrading Application #352, David & Rhonda Sherwood, 245 Long Neck Point Road. Proposing to construct a pool, spa, patio, and pool cabana; install associated stormwater management; and to perform related site development activities within a regulated area. *PUBLIC HEARING CLOSED: 7/28/2015. DECISION DEADLINE: 10/1/2015.*

Mr. Sini said that he wanted to recuse himself from participation in this matter and he left the meeting.

Commission members discussed the draft resolution and made a number of corrections and clarifications. Mr. Cunningham noted that he had not attended one of the public hearings but had reviewed all of the materials and the recording of that meeting. The following motion was made: That the Planning & Zoning Commission adopt the following revised resolution to modify and approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. DiDonna, seconded by Mr. Olvany and passed by a vote of 5-0 (Mr. Sini had departed the meeting and did not vote). The adopted resolution reads as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
September 22, 2015**

Application Number: Coastal Site Plan Review #302-A
Land Filling & Regrading Application #352

Street Address: 245 Long Neck Point Road
Assessor's Map #61 Lot #13-2

Name and Address of Applicants: David & Rhonda Sherwood
and Property Owners: 245 Long Neck Point Road
Darien, CT 06820

Name and Address of: D. Bruce Hill, Esq.
Applicant's Representative: Law Office of Bruce Hill, LLC
PO Box 1103
Darien, CT 06820

Activity Being Applied For: Proposing to construct a pool, spa, patio, and pool house/cabana; install associated stormwater management; and to perform related site development activities within a regulated area.

Property Location: The subject property is located on the east side of Long Neck Point Road approximately 2,600 feet south of its southernmost intersection with Pear Tree Point Road.

Zone: R-1

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Date of Public Hearing: May 26, 2015 (no testimony taken); June 2, 2015 (no testimony taken); continued to June 9, 2015, July 7, 2015 and July 28, 2015.

Deliberations Held: September 1, 2015, September 15, 2015, and September 22, 2015

Time and Place: 8:00 P.M. Room 206 and Room 119 (on 9/15) Town Hall

Publication of Hearing Notices

Dates: May 15 & 22, 2015

And June 26 and July 3, 2015

Newspaper: Darien News

Date of Action: September 22, 2015

Action: GRANTED WITH
MODIFICATIONS AND STIPULATIONS

Scheduled Date of Publication of Action:
October 2, 2015

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 406, 810, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

THE SUBJECT PROPERTY AND SUBJECT APPLICATION

1. The application is to construct a pool, spa, patio, and pool house/cabana; install associated stormwater management; associated regrading; and to perform related site development activities within the critical 100 foot Coastal Area Management (CAM) regulated area adjacent to Mean High Water (MHW). As shown on the submitted Grading Plan and Pool Cabana Plan, the pool measures 880 square feet (20' x 44'); and the pool house/cabana footprint is 487 square feet (approximately 13' x 34'2"). The associated pool terrace is a total of about 850 square feet, and surrounds the proposed pool on all sides. The spa is 64 square feet (8' x 8'), and is surrounded on three sides by terrace. The entire spa and most of the pool and pool house/cabana, and about ½ of the associated pool terrace are within the 100 foot critical Coastal Area Management (CAM) area adjacent to Mean High Water. A portion of the property is in the flood zone. The Pool Cabana Plan notes that the existing residence and proposed pool house/cabana and pool and spa would comprise 8,724 square feet of Building Coverage. The maximum Building Coverage allowed on this property is

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20%, or 8,782 square feet. The application, as proposed, would be 19.87% Building Coverage. The subject property is served by public water and sewer.

THE HOUSE APPROVAL OF 2014

2. On September 23, 2014, the Darien Planning and Zoning Commission reviewed Coastal Site Plan Review #302 for the construction of a replacement single-family residence for the Sherwoods. At that meeting, the Commission noted that the proposed house would be more than 100 feet from Mean High Water, although still within the 1,000 feet CAM area. All of the proposed activity, including the underground storm water management and drainage facilities were proposed outside of the critical 100 foot CAM area. The Commission approved the house at that time. No pool, spa, pool terrace, or pool house/cabana were requested or acted upon.

THE 1975 SUBDIVISION APPROVAL AND MAP #3924

3. In 1975, as part of Subdivision Application #510, the Planning and Zoning Commission approved a subdivision for William Edgerton, which allowed for the division of the College of the Sacred Heart of Noroton into eight building lots and five open space parcels. Map #3924 of the Darien Land Records (filed in early 1976) reflects that subdivision approval. The subject property at 245 Long Neck Point Road is shown as Lot #2 in the subdivision. Map #3924 shows that a portion of the building which was on the property in 1975 and which is noted to be removed, extends to within 80+/- feet of Mean High Water, which is within the Regulated Area. At that time the regulated area was 100 feet from Mean High Water which was elevation 3.65' above Mean Sea Level as established by National Geodetic Vertical Datum 1929 (NGVD 29)

THE LIMITS OF BUILDABLE AREA SHOWN ON THE SUBDIVISION MAP

4. The legend in the bottom left corner of Map #3924 shows a dashed area as "Limits of Buildable Area". That limit is shown on all the lots, including Lot #2. It calls this out specifically and distinctly as being 40 feet from the edge of the private part of Long Neck Point Road, and 25 feet from the side lot lines and outside of and beyond the Regulated Area. Those dimensions remain to this day the applicable front and side yard setbacks in the R-1 Zone. The Limits of Buildable Area shows the dashed line as being exactly 100 feet from Mean High Water, and coinciding with the Regulated Area. Other lots shown on this map also have a 100 foot Buildable Area line from Mean High Water. The 40 foot rear yard setback is not called out on this map—only the Limits of Buildable Area. Apparently this is because the 100 Regulated Area extends farther inland than the 40 foot setback from the easterly boundary of Lot 2.
5. At the public hearing, no evidence was presented showing that the Limits of Buildable Area have been changed or superseded since the filing of Map #3924 in the Darien Land Records in early 1976.

THE REQUIRED OPEN SPACE AREA SHOWN ON THE SUBDIVISION MAP

6. Attorney Bruce Hill confirmed that the 1975 subdivision notes that the Open Space on the west side of Long Neck Point Road will be commonly owned by the eight owners of the eight building lots. Each Open Space Parcel on the east side of Long Neck Point Road will be owned by the individual adjacent property owners rather than a collective group of

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owners. In 1975, the Planning & Zoning Commission required that the owners of the adjacent building lots would also own the adjacent Open Space. The size of each open space parcel on Map #3924 is called out separately from the size of the building lots.

7. Attorney Hill noted that the CAM Regulations did not go into effect until 1979, therefore there is no consideration given in the 1975 review of the subdivision to any CAM requirements. He said that when the building lots are conveyed from one property owner to another, they are conveyed as a unified deed and that no property owner can change the Open Space Declaration, which is filed in the Darien Land Records.
8. Attorney Hill said that the Open Space Declaration that currently restricts development activity on the Open Space parcel would remain unchanged as part of this proposal because it is an encumbrance on the land. He stated at the public hearing that the Open Space parcel and the building lot have always been conveyed as a unified property.

ZONING OFFICER KEATING'S JULY 28, 2015 MEMO

9. In his July 28, 2015 memo, Mr. Keating explained that the Open Space requirement in 1975 was that at least 10% of the total land area needed to be set aside as Open Space for the Edgerton subdivision. This required that 0.996 acres of land be designated as separate Open Space parcels. The combined area of the five Open Space parcels shown on the approved 1975 subdivision map is compliant with that requirement. If the Open Space parcel adjacent to Lot #2 is eliminated as a separate Open Space parcel, then the subdivision would not be compliant with the Open Space requirement of the Darien Subdivision Regulations.
10. Mr. Keating's memo confirms that the rear yard setback requirement for 245 Long Neck Point Road has and should continue to be measured from the line that divides the building lot from the Open Space parcel. This boundary line is shown on the submitted William W. Seymour & Associates survey dated July 23, 2014 (a solid black line with a dimension of 210.59'). All proposed structures must meet the zoning setbacks required in Section 406 of the Darien Zoning Regulations, including but not limited to, the 40 foot rear yard setback.
11. The Commission finds that the Open Space Parcel is a separate parcel established in order that the subdivision could be approved in 1975. That Parcel is separate from the building lot. The rear yard setback for 245 Long Neck Point Road shall be measured from the edge of the Open Space Parcel or to the Building Area as shown on the filed subdivision map, whichever is more restrictive. The Open Space Parcel and the Building Lot are not a unified property as claimed by the applicant's representative. The deed conveying the land to the Sherwoods, which is part of the record in this matter, as well as the 2014 Zoning Location Survey, specifically calls them out as separate parcels, each with specific dimensions.

STORMWATER MANAGEMENT

12. A rain garden and an underground infiltration system have been proposed to address stormwater management and water quality. The Commission notes the need for the applicant's engineer to prepare a Drainage Maintenance Plan, and file a Notice of Drainage Maintenance Plan in the Darien Land Records. This will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential impacts.

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FLOODING CONCERNS

13. During the public hearing, the Commission had concerns regarding the proposed pool and spa and pool house/cabana's location near the flood zone and potential flood damage. It was acknowledged by the applicant, and shown on the submitted plans, that the pool, spa, associated pool terrace, and pool house/cabana will all be located at or above elevation 19.0. The nearby VE flood elevation is elevation 15, which is less than ten horizontal feet from the pool. Storm surge is still a concern.
14. Attorney Hill noted at the public hearing that no portion of the proposed development work (the pool, spa, pool terrace, and/or pool house/cabana) is in the Flood Hazard Zone. All of the work area is designated as Zone X on the Flood Maps because it is at or above Elevation 20. He said that much of the Open Space area is in the Flood Hazard Zone because it is at or below Elevation 15. He said that within this application, no work is taking place in the Open Space area.
15. At the public hearing, it was noted that if the pool depth in that area would be eight feet, that means the bottom of the pool would be approximately at Elevation 11 and the bottom of the Cultec units would be at approximately Elevation 14 or so, both of which are below the Flood Level, although outside the flood zone. There was concern regarding possible storm surge and its possible effect on the area which is technically outside of the flood zone.

COASTAL SITE PLAN REVIEW

16. The July 23, 2014 submitted Zoning Location Survey from William W. Seymour & Associates shows the 100 foot CAM Review Area as extending 100 feet from the current designation of Mean High Water (which is elevation 3.2 feet above elevation 0.0 as determined by North American Vertical Datum 1988 - NAVD 88). It extends through the Open Space parcel, and into Parcel 2, which is the building lot. The Zoning Location Survey shows that the 100 foot CAM area starts at elevation 3.2, which is Mean High Water, and extends westward. This 100 foot CAM Review area is also shown on the submitted Grading Plan and Soil and Erosion Control Plan. Map #3924, filed in January 1976, shows Mean High Water at elevation 3.65+/- as determined by NGVD 29. Thus, the 100 foot measurement from Mean High Water is slightly different from late 1975/early 1976 to nearly 40 years later in 2015.
17. Attorney Hill stated at the public hearing that this project will not impact any coastal resources. He said that the area generally to be used for the pool, spa, terrace, and pool house/cabana was previously an area which had a building that was demolished as part of the subdivision approval approximately 40 years ago. At that point, it was turned into lawn, and has been lawn since that time.
18. At the public hearing, Commission member Voigt said that part of the Coastal Site Plan review process is the visual impact of the proposed development. He said the pool house/cabana especially, and possibly even the pool and associated pool fence, might be visible from coastal waters, and impact coastal views from Long Island Sound. Attorney Hill responded that since the view of the proposed structures would be against the view of the Sherwood house now under construction, it would be zero impact to visual appearance.

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Attorney Hill opined that the proposed pool and pool house construction would not have any adverse impact on coastal resources.

19. An e-mail was received from Kristal Kallenberg of the CT Department of Energy & Environmental Protection (DEEP) dated July 28, 2015. Ms. Kallenberg indicated that the DEEP found no inconsistencies of the project with the CAM policies.
20. The application has been reviewed by the Commission and, as modified herein, is in general compliance with the intent and purposes of Sections 850 and 1000.
21. The Commission finds that the proposed activities with respect to the pool, spa, terrace and pool house/cabana, if properly implemented as modified herein, are not contrary to the goals, objectives and policies of the Coastal Area Management Program.
22. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.
23. As modified, the proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #302-A and Land Filling & Regrading Application #352 are hereby **modified and granted** subject to the foregoing and following stipulations, modifications and understandings:

- A. In order to minimize coastal impacts, and to comply with the previous subdivision approval which shows a separate and distinct Open Space Parcel, and to comply with the Limits of Buildable Area as shown on Map #3924 in the Darien Land Records as previously approved by the Planning & Zoning Commission, the Commission hereby requires the following modifications to the plans:
 - 1) The pool, spa, pool equipment, and pool house/cabana shall be relocated and modified to:
 - a) be within the Limits of Buildable Area as shown on the signed and filed subdivision map; and
 - b) be at least 40 feet from the easterly boundary line of Lot 2, which is the edge of the Open Space Parcel, specifically shown as "Open Space" on the Zoning Location Survey dated July 23, 2014, in order to comply with Section 406 of the Zoning Regulations. This Open Space Parcel is a separate parcel from Parcel 2, which is shown on that Survey as where the proposed residence is now under construction. This modification ensures that all structures meet the applicable rear yard setbacks in Section 406 of the current Darien Zoning Regulations.
- B. A revised plan shall be prepared showing the location of the Limits of Buildable Area as shown on the 1975 Subdivision approval (and as reflected on Map #3924 in the Darien Land Records and based on the old NGVD 29, Mean Sea Level). That approval is still in full force and effect. All proposed structures (the pool, spa, pool equipment, and pool house/cabana), and the pool terrace shall be shown within the Limits of Buildable Area. The pool fence, underground

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drainage structures (infiltrators), and above ground rain garden shall be located entirely on Lot 2, the building lot, and may be within the 100 foot CAM area, but no closer than 50 feet from current Mean High Water.

- C. Construction of the pool, pool terrace, spa, and pool house/cabana, pool equipment, associated stormwater management, filling and regrading, and other site development activity shall be in accordance with the following plans submitted and reviewed by the Commission, **as required to be modified herein**:
- P&Z Application Planting Plan 245 Long Neck Point Road, David C. & Rhonda Sherwood, by William Kenny Associates LLC, scale as noted, last revised June 9, 2015.
 - Grading Plan prepared for Sherwood Residence 245 Long Neck Point Road, by NOK Civil Engineering & Land Surveying, dated July 21, 2014 and last revised 4/8/15.
 - Soil and Erosion Control Plan prepared for Sherwood Residence 245 Long Neck Point Road, by NOK Civil Engineering & Land Surveying, dated July 21, 2014 and last revised 4/8/15.
 - Storm Water Management Plan prepared for Sherwood Residence 245 Long Neck Point Road, by NOK Civil Engineering & Land Surveying, dated July 21, 2014 and last revised 4/8/15.
 - Pool Cabana—Plan, Elevation, Section & Details, Sherwood Residence by Thompson | Raissis | Architects | LLC, dated 5/26/15—received in P&Z office April 10, 2015.
 - Zoning Location Survey prepared for David C. Sherwood Rhonda R. Sherwood 245 Long Neck Point Road, by William W. Seymour & Associates, dated July 23, 2014. (NOTE: This plan shows the location of the proposed residence, and its distance—72.4' +/- from the edge of the Open Space Parcel. It also makes the distinction between the Open Space; the building lot (shown as “Parcel 2”); and “Parcel 2A”, which is the 25 foot wide part of the private street Long Neck Point Road).
- D. It is acknowledged that the pool, spa, associated pool terrace and/or pool house/cabana may need to be reduced in size, and their location slightly changed in order to comply with the Zoning Regulations and the previous subdivision approval (the two above-mentioned modifications). These elements cannot be larger than originally proposed, since the Commission cannot approve a larger project than originally applied for. All regrading, except for storm water management, shall be located outside of the current 100 foot critical Coastal Area Management (CAM) area. The sketch map on page 9 of this Adopted Resolution reflects the various dimensions and areas noted in Condition A, above. The 40 feet foot rear yard setback is shown in blue. The Limits of Buildable Area shown in the 1975 subdivision map are shown in red. The two lines are nearly coincident, but are not identical. The resulting area behind the residence for the desired construction elements (pool, spa, pool equipment, terrace, and pool house/cabana) is approximately 30' x 160' and outlined in green.
- E. Once revised coordinated plans are prepared, they shall be submitted for the Planning & Zoning Commission file in this matter. The Zoning Enforcement Officer and Planning & Zoning Director shall review the revised plans to determine if they are consistent with this approval. They may consult with the Planning and Zoning Chairman and one other Commission member if there is a question regarding consistency with this approval. If it is found that the revised plans comply with this approval, the property owner may then apply for two separate Zoning and Building Permits--one for the pool, spa, and terrace and one for the pool house/cabana.

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Once the revised Grading Plan, Soil & Erosion Control Plan, and Storm Water Management Plan are approved in concept, then all of the related detailed construction drawings and plans must be updated and coordinated to reflect the revised locations of the structures. If the revised plans are not found to be in compliance with this approval, then the applicant can revise the plans again or return to the Commission with a new application.

- F. The Planting Plan last revised June 9, 2015 is acceptable and approved, with the exception of modifications required to be consistent with Condition B, above. The Naturalized Shoreline Buffer Planting is hereby approved. This Planting Plan shall be modified to be consistent and coordinated with the Grading Plan, Soil and Erosion Control Plan, and Storm Water Management Plan by NOK Civil Engineering & Land Surveying.
- G. Due to the nature and location of this project, the Commission hereby waives the requirement for a performance bond.
- H. During the regrading and site work, the applicant shall utilize the sediment and erosion control measures shown on the three sheets of NOK Civil Engineering & Land Surveying plans in Condition A, above, and other measures as may be necessary due to site conditions, including tree protection. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the filling and regrading and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans, and as needed by site conditions. All erosion control measures must be maintained until the disturbed areas are stabilized.
- I. By November 15, 2015 (within the next 60 days), a Drainage Maintenance Plan shall be submitted to the Planning and Zoning Office for review and action by the Director of Public Works and the Planning and Zoning Director. After approval by the two Directors, it shall be filed in the Planning & Zoning Department. The Drainage Maintenance Plan shall require the property owner and all subsequent property owners of 245 Long Neck Point Road to maintain the on-site drainage facilities (the rain garden and underground infiltration system), and will alert future property owners of the existing on-site drainage facilities and the need to maintain said facilities to minimize any potential downhill impacts. A "Notice of Drainage Maintenance Plan" shall be filed in the Darien Land Records within the next 60 days of this approval and prior to the issuance of a Zoning and Building Permits for the proposed pool, spa, terrace, and for the pool house/cabana.
- J. Once the project is complete, and prior to September 22, 2016 and prior to the issuance of a Certificate of Zoning Compliance, the applicant shall certify with an 'as-built' survey map that all construction and planting work has been properly completed in accordance with the approved plans as required to be modified herein.
- K. A detailed regrading design and storm water drainage system design have been incorporated into the plans to avoid potential impacts of runoff on the adjacent properties and to address water quality, prior to the water flowing to Long Island Sound. Prior to the request for the Certificates of Zoning Compliance for the pool, spa, terrace; and the pool house/cabana, the

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applicant shall submit verification from a professional engineer in writing and/or photographs that all aspects of the site regrading and stormwater management have been completed in compliance with the approved plans referred to in Condition A, above.

- L. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- M. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.
- N. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (September 22, 2016).

All provisions and details of the application, **as required to be revised herein**, shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form and Notice of Drainage Maintenance Plan shall be filed in the Darien Land Records within 60 days of this action and prior to the issuance of a Zoning or Building Permit for the pool house/cabana or the pool/spa, or this approval shall become null and void.

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Chairman Cameron read the following agenda item:

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By Order dated November 19, 2014 in the matter of *Christopher & Margaret Stefanoni v. The Darien Planning and Zoning Commission* – Docket No.: HHB-CV-11-5015368S (the “Appeal”), and the related case of *Gregory v. Darien Planning and Zoning Commission* Docket No.: CV-13-6023798S Judge Henry Cohn remanded the matter back to the Darien Planning & Zoning Commission for an amendment to the Commission’s October 29, 2013 resolution to specify an approved number of units or a range of numbers of units, based on the record. The legal notice for the original application read as follows:

Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street. Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities.

Mr. Olvany said that he would recuse himself on this matter and departed the meeting.

The remaining four Commission members discussed the draft resolution and made a number of clarification and typographical errors. The following motion was made: That the Planning & Zoning Commission adopt the following resolution to approve the project subject to the conditions and stipulations as noted. The motion was made by Mr. DiDonna, seconded by Mr. Cunningham and approved by a vote of 4-0 (Mr. Sini and Mr. Olvany had previously departed the meeting). The adopted resolution reads as follows:

**DARIEN PLANNING AND ZONING COMMISSION
SECOND REMAND DECISION
SEPTEMBER 22, 2015**

Application Number: Affordable Housing Application under CGS 8-30g (#1-2010),
Site Plan Application #277, Land Filling & Regrading Application #247
Second Court-ordered remand

Site Location Street Address: **57 Hoyt Street**
Assessor’s Map #27 as Lot #168-1

Name and Address of Property Owners: Christopher & Margaret Stefanoni
And Applicants: 149 Nearwater Lane
Darien, CT 06820

By Order dated November 19, 2014 in the matter of *Christopher & Margaret Stefanoni v. The Darien Planning and Zoning Commission* – Docket No.: HHB-CV-11-5015368S (the “Appeal”), and the related case of *Gregory v. Darien Planning and Zoning Commission* Docket No.: CV-13-6023798S Judge Henry Cohn remanded the matter back to the Darien Planning & Zoning Commission for an amendment to the Commission’s October 29, 2013 resolution to specify an approved number of units or a range of numbers of units, based on the record. The legal notice for the original application read as follows:

Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt

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Street. Proposing to construct 16 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities.

Property Location: The subject property is located on the east side of Hoyt Street approximately 100 feet south of its intersection with Echo Drive.

Zone: R-1/3 Zone

Date of Public Hearings on this remand:

April 7, 2015; April 21, 2015; June 2, 2015; July 21, 2015; July 28, 2015

Time and Place of Public Hearings: 8:00 P.M. Darien Town Hall

Date of Action: September 22, 2015

Action: **GRANT THE REMAND APPLICATION WITH MODIFICATIONS
WITH A RANGE OF SIX TO EIGHT (6-8) UNITS APPROVED**

Scheduled Date of Publication of Action:
October 2, 2015

Newspaper: Darien News

The Commission has conducted its review and findings on the bases that:

- the size, nature, and intensity of the proposed use and activities are described in detail in the original application which included development plans, and the statements of the applicants at the time, whose testimony is contained in the record of the original public hearing, as well as of the public hearings on the first remand and this matter, which is the second remand. All of the materials from these records have been considered by the Commission and are incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with and has observed the site and its immediate environs.

Following careful review of the submitted application materials, all the testimony and materials submitted at each session of the public hearing, and related analyses, the Commission finds:

I. THE SUBJECT APPLICATION UPON REMAND

A. THE ORIGINAL APPLICATION REQUEST AND DECISION

The original application sought approval to construct 16 units of age-restricted housing on the subject property (30%--5 units--of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. That matter was granted with approval of four units and other stipulations and modifications in a resolution

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adopted on March 22, 2011 (“Decision”). That Decision was appealed, and the Court remanded the matter back to the Commission.

B. THE FIRST REMAND DECISION

On October 29, 2013, the Commission decided the first remand (“First Remand Decision”) and granted the application with modifications, including an increase in the number of permitted units from 4 to 8. On November 19, 2014, the Court remanded the matter back to the Commission a second time to specify an approved number of units or a range of numbers of units, based on the record. The First Remand Decision noted a number of issues found by the Commission which affected the public health and safety.

C. THE SECOND REMAND DECISION

It is noted that limited new evidence was presented to the Commission as part of this second remand. Much of the evidence considered had been part of the original application and the first remand. Some additional evidence was provided for this second remand, including, but not limited to, traffic accidents in the vicinity of the subject property from May 2013-April 2015.

The Commission has reviewed the record of the original application as well as the first remand in order to respond to the Judge’s order for this, the second remand.

II. THE SUBJECT PROPERTY AND EXISTING PROPERTY CONDITIONS

The subject property at 57 Hoyt Street is 22,230 square feet or .5103 acres. It is currently in the R-1/3, single-family residential zone. There are no inland wetlands on the property. It has 106 feet of frontage on Hoyt Street (State Route 106). The lot is generally rectangular in shape with a depth of 205-209 feet. To the rear of this building lot, there is a dedicated open space parcel that was created to fulfill a subdivision regulation requirement. It is in the same ownership, but it is not allowed to be developed.

The original application showed a proposed three story, 16 unit age-restricted multi-family residence. The building was to have 20,210 gross square feet—5,941 on the first floor; 7,266 on the second floor; and 7,003 on the third floor. All units would have two bedrooms, and range in size from 932 square feet to 1,073 square feet. Occupancy of all units would be age restricted.

The proposed building shown on the site plan is 10.3 feet from the south property line; 24 feet from the north property line; and 5.3 feet from the proposed stone wall which is proposed by the applicant to separate the open space in the rear of the property (as shown on the Proposed Site Plan by Hammons LLC last revised August 1, 2011). There are 24 on-site parking spaces proposed on the ground level.

III. HEALTH AND SAFETY ISSUES RELATED TO THE PROPOSED DEVELOPMENT

There are two broad categories of health and safety issues related to the proposed development. The first is traffic safety issues, which includes rear end accidents; speeds; pedestrian safety;

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and parking. As described below, these are all inter-related. The second category of health and safety issues are fire safety issues as noted by the Darien Fire Marshal.

A. TRAFFIC SAFETY ISSUES

1) Rear End Accidents

While rear end accidents in the vicinity of the subject property were cited in the Commission's First Remand Decision, the updated accident data shows that such accidents are an ongoing problem. In the May 2013-April 2015 period, there were three rear end accidents, with one of those the result of a vehicle attempting to pass a vehicle parked on Hoyt Street. As recently as September 17, 2015, another serious three car rear end collision occurred in the area resulting in an injury.

2) Speeds along Hoyt Street

New evidence regarding actual car speeds was submitted in a November 16, 2014 letter to the Darien Police Department signed by neighbors in the neighborhood. Again, confirming previous evidence, excessive speeds continue to be a significant issue along this specific portion of Hoyt Street.

3) Pedestrian Safety

On the morning of November 19, 2014, a few hours prior to Judge Cohn's decision to remand the matter back to the Planning and Zoning Commission, Holmes Elementary school families received an e-mail from the principal of Holmes Elementary School, which is across Hoyt Street and about 500 feet south of the subject property. In that e-mail, the school principal warns of multiple incidents where vehicles on Hoyt Street had hopped the curb and drove on the sidewalk.

4) Parking

In this specific instance, parking is a safety issue. The provision of sufficient on-site parking for residents and visitors is imperative. There have been occasions where a vehicle parked on Hoyt Street has either been hit (as documented in the first remand decision); or where a vehicle parked on Hoyt Street has resulted in a vehicle attempting to pass it and causing an accident, as occurred on May 28, 2014. Thus, sufficient on-site parking must be provided. The applicant's original proposal included 1.5 parking spaces per unit. Section 904c of the Darien Zoning Regulations requires at least 1.5 on-site parking spaces for each elderly housing unit in locations where multi-family elderly housing is permitted. Those locations are generally expected to be within walking distance of shops and services and/or are adjacent to municipal parking lots or areas where additional, safe, on-street parking is available. The proposed age restricted housing at 57 Hoyt Street does not meet these criteria. In order to avoid any unsafe parking off-site, the Commission's First Remand Decision required a parking ratio of 2 spaces for each unit, plus one handicapped-accessible space for the entire project. After further consideration, the Commission requires two on-site parking spaces for each unit which would include any legally-required handicapped-accessible spaces. While this may not ensure that all parking will be on-site all the time as the Commission cannot control where people park their vehicles, it will significantly increase the likelihood.

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B. FIRE SAFETY ISSUES

The Commission has reviewed the First Remand Decision's findings as to fire safety and repeats that information here, since it is still a valid and substantial public interest.

- 1) Previous memos and findings regarding space around the building, including space for rescue ladders, to fight fires and rescue residents.

The Fire Marshal submitted a July 16, 2013 memo which also attached his prior memos dated September 30, 2010 and January 14, 2011, regarding the subject property. The applicant did respond to and accommodate a number of issues in the 2010 and 2011 memos, which were outlined in their July 16, 2013 memo. However, one outstanding issue persists, that is item #1 in the July 16, 2013 memo. It regards appropriate distance around the building for fire fighters to operate. In his memo, The Fire Marshal has made it clear that this building, given a) its senior multi-family tenant configuration; b) its location some significant distance from the nearest fire station; and c) its structural design, height and construction materials, will need to have at least fifteen feet of clear space adjacent to each window at which a rescue ladder may be placed, and an unobstructed flat walking area around the building perimeter.

- 2) Need to have clear access.

The Fire Marshal's first comment in his July 16, 2013 memo read as follows:

"The east and south lot lines, in order to have access for the use of ladders for firefighting both need a minimum of 15 feet clear access from the building, which would include any vegetation growth, fences or walls..."

- 3) Impact of neighbors' fences.

Evidence in the form of a July 30, 2013 letter was received that the neighbor to the south at 53 Hoyt Street (Mrs. Guttuso) is planning to install a fence along the shared south property line if the project is constructed. Such fences are allowed as-of-right with no review or action needed in the R-1/3 zone for residential single-family properties. Special permit uses within the residential zone require a minimum 25 foot setback from property lines, and requests to modify site plans on commercial properties require review and action by the Commission, but fences on properties which contain single-family residences, such as Mrs. Guttuso's, do not. Thus, as there is a high probability that Mrs. Guttuso will build a fence, over which the Commission has no control, it must ensure that fire fighter access is safe and appropriate with a fence in place.

- 4) Eliminate safety problem of wall proposed by applicants.

In addition, under the applicant's proposal, there will be a step down retaining wall along that same south property line due to needed regrading for the building. Upon learning of this retaining wall, the Fire Marshal stated that there should be a fence along the top of the retaining wall in any event in order to avoid a dangerous downstep that would be a hazard to fire fighters and to exiting residents, particularly if there were a nighttime fire. Requiring the applicants to install such a fence along the retaining wall will address this issue, which provides additional justification for an increased set back

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from the southern property line, apart from any fence installed by the neighboring property owner.

IV. DETERMINATION

- A. The Commission finds that the foregoing issues continue to pose significant safety problems requiring modifications that are necessary to protect public interests in health and safety which the Commission may legally consider.
- B. The Commission also has balanced these health and safety issues with the need for five additional affordable housing units and finds that the probable harm presented by the application, as revised by the applicants, without further modifications clearly outweighs the need for five units of affordable housing in Darien in light of the steps Darien has taken to increase the number of affordable housing units, including the completion of projects referenced in the Decision and First Remand Decision.
- C. The Commission restates its acknowledgement of the importance of affordable housing and the legislative objective to increase such housing and has weighed it against the risks and dangers to the public presented by the applicants' project. The Commission finds that this worthy objective does not outweigh the traffic and fire safety dangers associated with the applicants' project as originally designed, and as revised on this remand, and that the project needs to be modified to address these issues and to properly balance the need for affordable housing against the harm to the public interest in traffic and pedestrian and fire safety. The Commission finds that modifications can be made to the revised application to obtain this better balance.

V. MODIFICATIONS REQUIRED TO ADDRESS THE TRAFFIC AND PEDESTRIAN SAFETY ISSUES AND FIRE SAFETY ISSUES

A. MODIFICATIONS REQUIRED FOR TRAFFIC AND PEDESTRIAN SAFETY.

In light of the above-mentioned ongoing traffic and pedestrian safety issues, the Commission's First Remand Decision included modifications, which are still found applicable and necessary to address *traffic safety issues* as presented by Michael Galante of FP Clark Associates. These modifications will address the aforementioned health and safety issues and reduce the identified risks to members of the public and residents of the proposed building.

- 1) Move driveway. Move the proposed driveway to the south by at least 10 (ten) feet-- thereby eliminating the need to have the radius of that driveway extend beyond the extension of the northerly property line. Moving the driveway will eliminate the need to get an easement or approval from the property owner to the north, as noted by Mr. Galante. It will also allow for increased planting space for the proposed trees along the north property line, and more space to place and construct any needed retaining wall(s).

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- 2) Further reduce the number of on-site parking units to two per unit. A reduction in the number of dwelling units allows for an increase in on-site parking, which will result in better traffic safety, as it will a) allow room to be allocated on-site for taxis, elderly service vehicles such as At Home in Darien (formerly Gallivant) and delivery vehicles, such as UPS and daily mail services; and b) allow sufficient on-site parking, greatly reducing the need for visitors, and possibly even residents, to park on Hoyt Street or to park off-site, thereby having to cross Hoyt Street. There have been accidents as a result of vehicles parked or stopped on Hoyt Street. In its previous decision, the Commission required two parking spaces per unit plus one handicapped-accessible space. This decision reduces that to two parking spaces per unit including one handicapped-accessible space for the entire project. This is a slight reduction in the previous requirement. The Commission believes that this will still be sufficient to significantly reduce the incidents of unsafe parking off-site or on street.
- 3) Emergency ingress/egress for fire equipment. Emergency ingress/egress for fire equipment shall be provided from/to Hoyt Street. It shall be composed of grass pavers.
- 4) Safely located mailboxes. The submitted accident data did show side-swipes of vehicles which were pulled over on Hoyt Street, including one mail truck. It is important that there be no mailboxes on or near the street, but rather, mailboxes in or near the proposed building.

B. MODIFICATION TO PLANS REQUIRED FOR FIRE SAFETY.

In order to address the fire safety issues identified on pages 4 and 5, the Commission hereby requires the following modifications to address these issues and reduce the identified risks to fire fighters, members of the public and residents of the proposed building:

- 1) Reduce the size of the building to address the need for space around the building, including space for rescue ladders, to fight fires and rescue residents and to have clear access.
 - a) Modify the building to have a 15 foot side setback for fire access along the south property line. That setback is now shown as 10.3 feet. Thus a reduction in size of the building of 4.9 feet is required to provide the required 15 feet. Since the building is 129 feet long, this will reduce the building size by 632.1 feet on each of the three floors (1,896 sf).
 - b) Modify the building to have a 15 foot rear setback for fire access along the east property line. That setback is now shown as 5.3 feet. The Fire Marshal in his September 30, 2010 memo requested additional space to get around that side of the building. If that space were to become 15 feet, the building would need to be reduced by 10 feet x 38 feet. This is a total of 380 square feet on each of three floors, or 1,140 square feet.
 - c) Install and maintain a stockade fence atop the proposed retaining wall along the south property line in order to avoid the dangerous downstep hazard identified by the Fire Marshal.

VI. VIABILITY

Section 8-30g of the Connecticut General Statutes, in subsection (f), reads in part as follows:

“...f) Any person whose affordable housing application is denied, or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units in a set-aside development, may appeal such decision pursuant to the procedures of this section....”

The Commentary to that Statute notes:

“...To have statutory standing to bring an affordable housing appeal under Subsec., plaintiff was required to establish that defendant’s approval of plan with modifications created a substantial adverse impact either on the viability of the planned affordable housing development or on the degree of affordability of the planned units. 139 CA 256....”

In this specific instance, the applicant did not present any evidence to the Commission on the impact of the Commission’s decision on the viability of the project. Absent that, the Commission is modifying its First Remand Decision to further allow the applicant alternate options to construct the project, relative to number of units and size of the apartments/condominiums. By right, one single dwelling is allowed on the site. The first approval allowed four times that permitted density. The result of the first remand was an increase from 4 units to 8 units. As part of this decision, the Commission is allowing **a range of 6-8 units** to be constructed on-site. This additional flexibility will allow the applicant to pursue various economic options for the property.

VII. DECISION TO GRANT THE REMAND APPLICATION WITH MODIFICATIONS

NOW THEREFORE BE IT RESOLVED that the applications for Affordable Housing Application Under CGS 8-30g (#1-2010), Site Plan Application #277, Land Filling & Regrading Application #247, Christopher & Margaret Stefanoni, 57 Hoyt Street, are hereby GRANTED WITH FURTHER MODIFICATIONS BASED ON THE RECORD PRESENTED ON REMAND.

In addition to the modifications and stipulations approved in the Decision and the First Remand Decision, the application, as revised, shall be modified as follows based upon the entire records from 2010-2011 and the 2013 remand. The Commission believes that after further review of the matter, an appropriate range of units can be established on-site, which will limit the effect on public health and safety. Further, the Commission believes that modifying the parameters of the size of the units will give the applicant further flexibility in designing the units.

A. THE APPLICATION SHALL BE MODIFIED TO ADDRESS TRAFFIC SAFETY REQUIREMENTS:

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Modify plans to address traffic and pedestrian safety issues as presented during the public hearing process:

1. Change the number of proposed units from eight (approved as part of the first remand) to **a range of six to eight units** (with at least 30% of those units being affordable and all of the units being age restricted as per the original proposal) in order to reduce the safety risk to vehicles in the southbound lane on Hoyt Street and to vehicles exiting the site due to the inadequate sight lines and to ensure public health and safety. The testimony on sight lines was presented as part of the original application and the first remand. The Commission acknowledges that this modification is an increase from the four units approved in its original Decision of 2011, and notes that the applicants testified at the court hearing in this case that a reduction to four units adversely impacted the viability of their project. The modified number of **a range of six to eight units** represents the Commission's determination after balancing the safety risks to the public and the residents of the development with the statutory need for affordable housing and the project's viability.
2. Change the number of parking spaces to at least two per unit (**including legally-required handicapped-accessible spaces**). A reduction in the number of units allows for the establishment of sufficient on-site parking, which will result in better traffic safety. It will allow room to be allocated on-site for taxis and delivery vehicles, such as UPS and daily mail services. It will allow maneuvering room for the At Home in Darien (formerly Gallivant) van. Lastly, it will allow sufficient on-site parking, greatly reducing the need for visitors (and possibly even residents) to park off-site and/or on the street, thereby having to walk in or cross Hoyt Street.
3. **Require mailboxes to be placed in or near the proposed building.** The submitted accident data did show side-swipes of vehicles that were pulled over on Hoyt Street, including one mail truck. It is important that there be no mailboxes on or near the street, but rather, mailboxes in or near the proposed building to avoid the mail delivery vehicle pulling over on Hoyt Street and residents walking out onto Hoyt Street to collect their mail.

B. THE APPLICATION SHALL BE MODIFIED TO ADDRESS FIRE SAFETY REQUIREMENTS OF DARIEN FIRE MARSHAL:

Modify the plans to address the fire safety issues.

1. Increase fire access along the south and east sides of the building. As stated in the Commission's previous decisions, there should be additional room around the south and east sides of the building to give the Fire Department more appropriate and improved room to operate. The building setback on the south and the east property lines (considered the side and rear yards respectively as defined in the Darien Zoning Regulations), are proposed at approximately 10 feet and 5 feet. The Commission has previously determined, and now reiterates, that these setbacks shall be increased to comply with the deed and recorded property setback requirements. There shall be at least 25 feet along the east property line

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(adjacent to the dedicated open space) to address the vested property rights issues noted by Attorney Fuller. There shall also be 15 feet along the south property line to address the issues of the Fire Marshal outlined in his September 30, 2010 memo and reiterated in his other memos, as well as to comply with the side setback restrictions of the described property rights.

2. Install and maintain a stockade fence atop the proposed retaining wall along the south property line in order to avoid the dangerous downstep hazard identified by the Fire Marshal.

In all other respects, the Planning and Zoning Commission's First Remand Decision of March 22, 2011 remains in effect, and is incorporated by reference.

C. THE APPLICATION MAY BE MODIFIED BY THE APPLICANT TO GIVE THEMSELVES ADDITIONAL FLEXIBILITY WITHIN THE BUILDING.

In its original decision, the Planning and Zoning Commission approved four units. In its decision on the subsequent remand, the Commission approved eight units. Based upon additional review, the Commission hereby approves **a range of six to eight units.**

Clarification of the parameters by which those units may be constructed (with the final configuration at the applicant's discretion) is as follows:

1. The applicant originally proposed two-bedroom units, all age-restricted (elderly). Unit sizes were in the range of 932 to 1,020 square feet.
2. By approving a range of units, the Commission hereby grants additional flexibility to the applicant as follows:
 - a) The Commission is approving a building approximately 110 feet from west to east and approximately 55 feet from north to south. Each floor would contain approximately 6,050 square feet except the first floor which would have approximately 5,210 square feet due to a 70' x 12' portion dedicated to some parking spaces. The total square footage of interior space would be approximately 17,310 square feet (5,210 first floor, 6,050 second floor and 6,050 third floor). Reducing by about 10-15% for hallways and other such interior "lost space", the remaining space for units would be 14,713+/- square feet (assuming 15%). This results in six units averaging 2,452+/- square feet each, or eight units averaging 1,839+/- square feet each. The limits in size of the building are related to setbacks and height. These would be larger units than proposed and designed by the applicant.
 - b) The size of the units within the building may be modified by the applicant in the following ways:
 - i. All units must be within 10% in size of each other and the affordable units must be comparable in size to the market rate units (the average size of the affordable units must be within 5% of the average size of the market rate units). This is consistent with the applicants' original proposal.

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- ii. All units shall have the same number of bedrooms and bathrooms. The number of bathrooms in each unit may be increased by the applicant, so long as there is consistency amongst the units.
- iii. Affordable units shall be located throughout the building—not clustered into one part of the building.

The modified number of units approved herein (**a range of six to eight units**) represents the Commission's determination to balance the risks to the public and the residents of the development with the statutory need for affordable housing and the project's viability.

The Commission notes that the chart on the following page shows the number of affordable units that will need to be constructed based upon the number of total units decided upon by the applicant. All of the units must be age restricted consistent with the representations made by the applicant in the original application.

The Commission believes that additional units beyond the range noted herein would pose an unacceptable health and safety risk to the public and the residents of the development.

VIII. SUMMARY--THE COMMISSION'S RATIONALE BASED ON THE RECORD.

Safety issues still exist on-site and adjacent to the site. These are evidenced by the number of continuing, serious accidents in this particularly sensitive stretch of Hoyt Street due to the proximity of the elementary school; parking, as it relates to sufficient on-site spaces to avoid vehicles stopping, standing, or parking on Hoyt Street; and documented Fire Marshal findings. Sight line issues, as noted in the original Decision and First Remand Decision still exist and would be degraded by parking on Hoyt Street, and because of these health and safety issues, a slight reduction in the overall number of units is justified in order to balance the risks to public health and safety with the need for affordable housing

**REQUIRED AFFORDABLE UNITS
IN SET ASIDE DEVELOPMENTS UNDER
CGS 8-30g**

TOTAL UNITS	MARKET- RATE UNITS	TOTAL AFFORDABLE UNITS	AFFORDABLE UNITS		TOTAL PERCENT AFFORDABLE
			80% SMI	60% SMI	
6	4	2	1	1	33.3%
7	4	3	1	2	42.9%
8	5	3	1	2	37.5%

Prepared by: Darien Planning & Zoning
Office

“Set-aside development” means a development in which not less than thirty per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that for at

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least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of their annual income, where such income is less than or equal to eighty per cent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than fifteen percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the median income.

"Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Dept. of Housing and Urban Development.

Source: Section 8-30g of the Connecticut General Statutes.

There being no further business, the following motion was made: That the Planning & Zoning Commission adjourn the meeting. The motion was made by Mr. Voigt, seconded by Mr. Cunningham and unanimously approved. The meeting was adjourned at 8:30 P.M

Respectfully submitted,

David J. Keating
Planning & Zoning Assistant Director

09.22.2015min